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8 **UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

10 SHANNON ALYNN RAMSAY,) CASE NO.: **C-07-3645 JW**
 11 Plaintiff,)
 12 v.) **PLAINTIFF'S NOTICE OF MOTION FOR
 13**) **PARTIAL SUMMARY JUDGMENT; AND**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
 14 THE STATE BAR OF CALIFORNIA, and) [EVIDENCE FILED SEPARATELY]
 15 DOES 1 - 100 inclusive.)
 16 Defendants.) Date: March 10, 2008
) Time: 9:00 A.M.
) Dept.: Courtroom 8, 4th Floor
) Judge: Honorable James Ware
 17)

18 **NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**

19 TO DEFENDANT THE STATE BAR OF CALIFORNIA, ITS ATTORNEYS OF

20 RECORD, AND TO THE COURT CLERK:

21 PLEASE TAKE NOTICE that on February 25, 2008 at 9 a.m., or as

22 soon thereafter as counsel may be heard in Courtroom 8 of the United States District
 23 Court for the Northern District of California, located at 280 South 1st Street, San Jose, CA,
 24 Plaintiff Shannon Alynn Ramsay will move, and hereby does move, for partial summary
 25 judgment on her claim that Defendant has violated the Americans with Disabilities Act
 26 ("ADA") by failing and refusing to provide her, and those of her minority class equal
 27 PLNTF'S MO FOR PARTIAL SUM JUDGMT & P'S & A'S IN SUP

1 privileges, and benefits, by failing and refusing to compile and publish the California State
2 Bar Examination passage rates for disabled applicants, when the rates for other minority
3 groups are recorded, calculated, and published. This motion is brought on the ground that
4 no triable issue of fact exists and that Mr. Ramsay is entitled to a partial judgment as a
5 matter of law.

6 Ms. Ramsay's motion is based on this Notice, the following Points and Authorities,
7 the accompanying Declaration of John A. Shepardson, all pleadings, records and
8 documents on file herein, and such additional evidence and argument as may be properly
9 introduced in support of the motion.

10

11 MEMORANDUM OF POINTS AND AUTHORITIES

12

13 I. INTRODUCTION

14

15 **“Every mile is two in Winter”** Jacula Prudentum.

16 The reality for Shannon, whether *summer or winter*, is every mile is ten. She is
17 blind. The Americans With Disabilities Act (“ADA”) was passed to open previously closed
18 doors of economic and social opportunity for the disabled—however, the ADA, like other
19 laws, has no true significance, unless enforced.

20 Through intelligence, willpower and family support, she graduated from Stanford
21 University (2003), and U.C. Davis Law School (2005). She has not passed the California
22 Bar Exam after four attempts. Shannon continues her quest to pass the Bar.

23

24 Her Complaint identifies a host of issues relating to the Bar Examination. This
25 motion addresses a single issue for this Court's consideration:

26

27 **Why is the Bar treating disabled test-takers differently than other
28 minority groups in its refusal to compile and publish examination
 passage rates for the legally disabled?**

1 Are the passage rates for disabled applicants in the single digits, as she is
2 informed and believes? Shouldn't there be *full and equal disclosure* for disabled
3 applicants, and for the disabled who are contemplating attempting the arduous task of
4 becoming California licensed attorneys? If it is important enough to compile the data and
5 post the passage rates for other minority groups, then why not do so for the disabled?
6 Gathering of minority group passages rates assists The Bar in evaluating the exam itself,
7 so why exclude disabled applicant data from the process?

8 The train has left the station without the disabled.

9 The standards of the ADA are clear. The Bar is violating them. The Bar is on
10 notice of its continuing violation, and still refuses to compile or publish disabled students
11 passage rates. Thus, Shannon suit seeks an order from the court to order compliance.

12 **II. BRIEF STATEMENT OF FACTS**

13 It is undisputed that Shannon is legally blind (JAS Dec).

14 It is undisputed that Shannon has attempted to pass the California Bar Exam on
15 four occasions, without success (JAS Dec).

16 It is undisputed that the Bar publishes the passages rates for several minority
17 groups (JAS Dec, Ex-1).

18 It is undisputed that the Bar does not publish the passage rates for disabled
19 students (JAS Dec, Ex-1, marked area).

20 It is undisputed that The Bar purports to promote diversity in the legal profession
21 (JAS Dec, Ex-2, underlined areas).

22 It is undisputed that The Bar admits it gathers race/ethnicity and gender
23 passage rates to "assist in the continuing evaluation of the examination." (JAS Dec, Ex-3).

1 **III. LEGAL STANDARD**

2 Summary judgment is proper where there is no genuine issue as to a material
 3 fact and the moving party is entitled to judgment. Fed. R. Civ. Pro. 56C; Celotex Corp. V.
 4 Catrett, 477 U.S. 317, 322 (1986).

5 To avoid summary judgment, Defendant must produce evidence of sufficient
 6 caliber to support a judgment in their favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
 7 252 (1986) (opposing party must present "evidence upon which a jury can properly
 8 proceed to find a verdict for the party producing it"). Such evidence must be real and
 9 substantial, not merely colorable. Id. At 249-50 ("The mere existence of a scintilla of
 10 evidence...will be insufficient"); Matsushita Elec. Indus. V. Zenith Radio Corp., 475 U.S.
 11 574, 586 (1986) (opposing party "must do more than simply show there is some
 12 metaphysical doubt as to the material facts"). Evidence that could not justify a finding for
 13 plaintiffs by the applicable evidentiary standard will not defeat summary judgment. Neely
 14 v. St. Paul Fire & Marine Ins. Co., 584 F.2d 341, 346 (9th Cir. 1978). If Defendants cannot
 15 produce evidence supporting their allegations, the Court can only conclude there is none.
 16 Collin v. Am. Empire Ins. Co., 21 Cal.App. 4th 787, 808 (1994).

17 **IV. ARGUMENT**

18 **A. DEFENDANT HAS VIOLATED TITLE II OF THE ADA.**

19 1. ADA Public Policy.

20 Title 42 of the United States Code is entitled:

21 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH
 22 DISABILITIES.

23 Section 2101 sets forth the findings for passing the ADA:

1 (a) Findings. – The Congress finds that–
2

3 (1) some 43,000,000 Americans have one or more
4 physical or mental disabilities, and this number is
increasing as the population as a whole is growing
older;

5 (2) historically, society has tended to isolate and
6 segregate individuals with disabilities, and, despite
7 some improvements, such forms of discrimination
8 against individuals with disabilities continue to be
a serious and pervasive social problem;

9 (3) discrimination against individuals with
10 disabilities persists in such critical areas as
11 employment, housing, public accommodations,
12 education, transportation, communication,
13 recreation, institutionalization, health services,
voting, and access to public services;

14 (4) unlike individuals who have experienced
15 discrimination on the basis of race, color, sex,
16 national origin, religion, or age, individuals who
17 have experienced discrimination on the basis of
disability have often had no legal recourse to
18 redress such discrimination;

19 (5) individuals with disabilities continually
20 encounter various forms of discrimination,
21 including outright intentional exclusion, the
22 discriminatory effects of architectural,
transportation, and communication barriers,
23 overprotective rules and policies, failure to make
modifications to existing facilities and practices,
24 exclusionary qualification standards
and criteria, segregation, and relegation to lesser
services, programs, activities, benefits, jobs, or
25 other opportunities; (emphasis added)

26 (6) census data, national polls, and other studies
27 have documented that people with disabilities, as a
28

1 group, occupy an inferior status in our society, and
2 are severely disadvantaged socially, vocationally,
3 economically, and educationally; (emphasis added)

4 (7) individuals with disabilities are a discrete and
5 insular minority who have been faced with
6 restrictions and limitations, subjected to a history
7 of purposeful unequal treatment, and relegated to
8 a position of political powerlessness in our society,
9 based on characteristics that are beyond the
10 control of such individuals and resulting from
11 stereotypic assumptions not truly indicative of the
12 individual ability of such individuals to participate
13 in, and contribute to, society;

14 (8) the Nation's proper goals regarding individuals
15 with disabilities are to assure equality of
16 opportunity, full participation, independent living,
17 and economic self-sufficiency for such individuals;
18 and (emphasis added)

19 (9) the continuing existence of unfair and
20 unnecessary discrimination and prejudice denies
21 people with disabilities the opportunity to compete
22 on an equal basis and to pursue those
23 opportunities for which our free society is
24 justifiably famous, and costs the United States
25 billions of dollars in unnecessary expenses
26 resulting from dependency and nonproductivity.
27 (emphasis added)

28 (b) Purpose. – It is the purpose of this chapter–

29 (1) to provide a clear and comprehensive national
30 mandate for the elimination of discrimination
31 against individuals with disabilities;

32 (2) to provide clear, strong, consistent, enforceable
33 standards addressing discrimination against
34 individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day – to – day by people with disabilities.¹

These are public policies for requiring both the business and government sectors to provide the legally disabled with the means to more fully integrate into our society, and shouldn't no less an entity that The California State Bar should and want to comply with the spirit and letter of the ADA? Shouldn't the Bar want to be in the vanguard, leading the way, and setting an example for others to follow? The fact that Defendant is lagging in compliance is unacceptable, particularly when it is so easy to compile the data, and to publish, the disabled applicant's passage rates, right along next to the other minority group passage rates.

2. Shannon is a disabled person pursuant to the ADA.

ADA § 12102 states:

The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more the major life activities of such individual;

¹ “It is also the legislative policy of the State of California to ‘mainstream’ developmentally disabled persons...” Cable v. Department of Developmental Services of the State of California, 973 F. Supp. 937, 938.

1 (B) a record of such an impairment; or
2

3 (C) being regarded as having such impairment. (emphasis
4 added)

5 Clearly, Shannon's total blindness satisfies any and all of the above-
6 criteria.

7 3. The ADA Prohibits Discrimination by Public Entities.

8 Subchapter II states in pertinent part:

9 'SUBCHAPTER II – PUBLIC SERVICES

10 Part A – Prohibition Against Discrimination and other
11 Generally Applicable Provisions

12 "Section 12131. Definitions.

13 As used in this subchapter:

14 (1) Public entity

15 The term "public entity" means

16 (A) any State or local government;

17 (B) any department, agency, special purpose district,
18 or other instrumentality of a State or States or local
19 government; and (emphasis added)

20 (C) the National Railroad Passenger Corporation, and
21 any commuter authority (as defined in section
22 24102(4) of title 49).

23 (2) Qualified individual with a disability

24 The term "qualified individual with a disability" means an
25 individual with a disability who, with or without reasonable
26 modification to rules, policies, or practices, the removal of

1 architectural, communication, or transportation barriers, or
2 the provision of auxiliary aids and services, meets the
3 essential eligibility requirements for the receipt of services
4 or the participation in programs or activities provided by a
public entity.

5 Section 12132. Discrimination.

6 Subject to the provisions of this subchapter, no qualified
7 individual with a disability shall, by reason of such
8 disability, be excluded from participation in or be denied
9 the benefit of services, programs, or activities of a public
entity, or be subjected to discrimination by any such entity.
(emphasis added)

10 Section 12133. Enforcement

11 The remedies, procedures, and rights set forth in section
12 794a of title 29 shall be the remedies, procedures, and
13 rights this subchapter provides to any person alleging
14 discrimination on the basis of disability in violation of
15 section 12132 of this title.

16 Section 12134. Regulations.

17 Not later than 1 year after July 26, 1990, the Attorney
18 General shall promulgate regulations in an accessible
19 format that implement this part. Such regulations shall not
20 include any matter within the scope of the authority of the
21 Secretary of Transportation under section 12143, 12149, or
12164 of this title.

22 (b) Relationship to other regulations

23 Except for 'program accessibility, existing facilities', and
24 'communications', regulations under subsection (a) of this
25 section shall be consistent with this chapter and with the
26 coordination regulations under part 41 of title 28, Code of
27 Federal Regulations (as promulgated by the Department of
28 Health, Education, and Welfare on January 13, 1978),
applicable to recipients of Federal financial assistance under

1 section 794 of title 29. With respect to 'program
2 accessibility, existing facilities', and 'communications', such
3 regulations shall be consistent with regulations and analysis
4 as in part 39 of title 28 of the Code of Federal Regulations,
5 applicable to federally conducted activities under section
6 794 of title 29.

7 (c) Standards
8

9 Regulations under subsection (a) of this section shall
10 include standards applicable to facilities and vehicles
11 covered by this part, other than facilities, stations, rail
12 passenger care, and vehicles covered by part B of this
13 subchapter. Such standards shall be consistent with the
14 minimum guidelines and requirements issued by the
15 Architectural and Transportation Barriers Compliance Board
16 in accordance with section 12204(a) of this title.

17 First, Defendant, as an instrumentality of the State, is clearly
18 providing a Public Service, and is subject to the ADA.

19 Second, the Act's language clearly precludes denial of benefits to
20 the disabled that are otherwise available to the nondisabled. The
21 nondisabled minority groups have the benefit of their Bar Exam passage
22 rates being considered in evaluating the examination, as well as have
23 the rates published. The disabled are denied this service and benefit.
24 Thus, Defendant is in clear violation of the ADA Act.

25 4. 28 Code of Federal Regulation ("CFR") Part 35 sets forth
26 the Department of Justice's regulations of Public Services
27 pursuant to the ADA.

28 The regulation summary states in pertinent part:

1 “SUMMARY: This rule implements subtitle A of title II of the
 2 Americans with Disabilities Act, Pub. L. 101-336, which
 3 prohibits discrimination on the basis of disability by public
 4 entities. Subtitle A protects qualified individuals with
 5 disabilities from discrimination on the basis for disability in
 6 the services, programs or activities of all state and local
 7 governments. (emphasis added)

8 CFR § 35.130 states in pertinent part:

- 9 (a) No qualified individual with a disability shall, on the basis
 10 of disability, be excluded from participation in or be
 11 denied the benefits of the services, programs, or activities
 12 of a public entity, or be subjected to discrimination by any
 13 public entity. (emphasis added)
- 14 (b) (1) A public entity, in providing any aid, benefit, or service,
 15 may not, directly or through contractual, licensing or other
 16 arrangements, on the basis of disability—
 - 17 (i) Deny a qualified individual with a disability the
 18 opportunity to participate in or benefit from the aid,
 19 benefit or service;
 - 20 (ii) Afford a qualified individual with a disability an
 21 opportunity to participate in or benefit from the aid,
 22 benefit, or service that is not equal to that afforded
 23 others;
 - 24 (iii) Provide a qualified individual with a disability with an aid,
 25 benefit, or service that is not as effective in affording
 26 equal opportunity to obtain the same result, to gain the
 27 same benefit, or to reach the same level of achievement
 28 as that provided to others;
 - 29 (vii) Otherwise limit a qualified individual with a disability in
 30 the enjoyment of any right, privilege, advantage, or
 31 opportunity enjoyed by others receiving the aid, benefit,
 32 or service; (emphasis added)

33 The regulations reiterate that the disabled must be provided
 34 benefits and services equal and to those of the nondisabled. Defendant
 35 has chosen to not compile or publish disabled applicants passage rates.

1 Thus, Defendant's violation of the regulations applicable to the ADA
2 reinforces the notion that Defendant is violating the ADA.
3

4 5. Defendant can reasonably accommodate Shannon (and other
5 disabled test-takers) by publishing Bar passage rates.

6 The ADA defines reasonable accommodation as:

7 (A) making existing facilities used by employees readily
8 accessible to and usable by individuals with
9 disabilities; and
10 (B) job restructuring, part-time or modified work
11 schedules, reassignment to a vacant position,
12 acquisition or modification of equipment or devices,
13 appropriate adjustment or modifications of
14 examinations, training materials or policies, the
provision of qualified readers or interpreters, and
other similar accommodations for individuals with
disabilities. (emphasis added)

15 Defendant can easily accommodate Shannon's request for
16 compiling and publishing passage rates for disabled test-takers. By using
17 the definition of a disabled as set forth in the ADA, and having applicants
18 self-report, as is the case for other minority groups, the raw data can be
19 easily obtained. Defendant can then compile the data, and publish—by
20 simply following the same procedures that presently exist for other
21 minority groups that have their passage rates compiled and published.
22

23 6. It is not an undue hardship for Defendant to publish
disabled test-takers passage rates.

24 The ADA defines "Undue Hardship" as:
25

26 (A) In general
27

The term “undue hardship” means an action requiring significant difficulty expense, when considered in light of the factors set forth in subparagraph (B). (emphasis added)

(B) Factors to be considered

In determining whether an accommodation would impose an undue influence hardship on a covered entity, factors to be considered include

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type and location of its facilities; and
- (iv) the type of operation and operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

As stated above, Defendant can easily publish the disabled test-takers passage rates. The incremental cost for compiling and publishing disabled applicants passage rates must be negligible.

7. Defendant is not immune from ADA requirements.

ADA § 12202 states:

A State shall not be immune under the eleventh amendment

1 to the Constitution of the United States from an action in
2 Federal or State court of competent jurisdiction for a
3 violation of this chapter. In any action against a State for a
4 violation of the requirements of this chapter, remedies
5 (including remedies both at law and in equity) are available
6 for such a violation to the same extent as such remedies are
7 available for such a violation in an action against any public
8 or private entity other than a State.

9
10 Defendant, as an instrumentality of the State of California, is not
11 immune from the ADA laws.

12 8. This Court must issue an Injunction.

13
14 “In addition, the ADA statute is clear that ‘either a
15 continuing or a threatened violation of the ADA is an injury
16 within the meaning of the Act.’ Pickern v. Holiday Quality
17 Foods, Inc., 293 F.3d 1133, 1136 (emphasis added). Here, it
18 is clear that Plaintiff can obtain relief through a permanent
19 injunction prohibiting Defendant from blocking the handicap
20 parking spaces.” Watanabe v. Home Depot USA, Inc., U.S.
21 Dist. Lexis 27016 (C.D. Cal.. Aug 26, 2003) at p. 13.

22 Thus, the ADA authorizes injunctions. The Bar is continuing to
23 violate the ADA by not providing equal privileges and services to the
24 disabled applicants. An injunction must be issued to effectuate compliance.

25 **IV. CONCLUSION**

26 Shannon is a “Qualified Individual With Disability”. She is repeat
27 Bar Examinee test-taker. The ADA requires Defendant to provide the
28 disabled with the same benefits and services as is provided to the
nondisabled. Defendant compiles and publishes passage rates for other
minority groups, and does not for the disabled. The Bar is violating the

1 ADA. It is a reasonable accommodation to compile and publish the
2 disabled test-taker passage rates, and is not an "Undue Hardship".
3
4 Therefore, Plaintiff respectfully requests a permanent injunction be issued
5 requiring The Bar to comply with the ADA. Ms. Ramsey reserves her claim
6 for attorney fees.

7
8 DATE: January 1, 2008



9
10 JOHN A. SHEPARDSON, Attorney for
11 Plaintiff SHANNON ALYNN RAMSAY

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